



Appeal Decision

Hearing held on Thursday 20 March 2003

Site visit made on Thursday 20 March 2003

by Roger P Brown DipArch DipTP ARIBA MRTPI

an Inspector appointed by the First Secretary of State

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Date
07 APR 2003

Appeal Ref: APP/W1525/A/02/1095278

Sunnymead, Ingatestone Road, Highwood, Chelmsford CM1 3QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Steers against the decision of Chelmsford Borough Council.
- The application (Ref. 02/00755/FUL), dated 6 April 2002, was refused by notice dated 12 June 2002.
- The development proposed is residential use for one Gypsy family. Stationing of one mobile home and a utility room.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. A mobile home is already located on the appeal site. However the present siting of this unit has little in common with the application block (site) plan, which is diagrammatic and imprecise and does not accurately record the overall proportions of the appeal site. There are no detailed plans or elevations of the proposed utility room. Nevertheless, the Council agrees that, in part, the appeal application is seeking retrospective approval, and I will determine it on that basis.

Main Issues

2. The appeal site is located within the Metropolitan Green Belt; the appellant acknowledges that the proposal is inappropriate development within such an area. Therefore, the main issues are firstly whether there are very special circumstances which would outweigh any objections to such development. Secondly, the impact of such development on the character and openness of the Green Belt.

Planning Policy

3. The development plan comprises the Essex and Southend-on-Sea Replacement Structure Plan (April 2001), and the Chelmsford Borough Local Plan (April 1997). Within the Structure Plan, Policies C1 and C2 establish the general extent of the Metropolitan Green Belt, and provide guidance pertaining to development within such an area, respectively. Policy CS2 seeks to protect the natural and built environment, whilst Policy H6 requires that existing Gypsy site provision be maintained, and further site provision be made, where appropriate, in adopted local plans.
4. Within the Local Plan, Policy HO4 seeks to confine development to within defined settlements within the Green Belt, and rural areas beyond the Green Belt. Policy HO17 establishes criteria relating to Gypsy caravan sites on land beyond the Green Belt, whilst Policy ENV1 provides guidance pertaining to new buildings.

5. The Council has also made reference to Policy COM10 within the Chelmsford Borough Local Plan 2001 - 2011 Deposit Draft. This establishes criteria relating to Gypsy and Travelling Showmen sites. Supporting text to this Policy states that no new proposals are included in the Plan, as within the last Plan period permission was given for a gypsy site, and the extension of a travelling showmen's site. This emerging Local Plan has been subject to public consultation, with the Public Local Inquiry expected in the summer of this year; it is therefore at an early stage within the adoption process. However, because Policy COM10 makes reference to Section 80 of the Criminal Justice and Public Order Act 1994, it accords with the latest guidance. In such circumstances, I will afford it appropriate weight.
6. Both parties have variously made reference to guidance within Planning Policy Guidance (PPG)1 – General Policy and Principles, PPG3 – Housing, PPG12 – Development Plans, and Circular 1/94 – Gypsy Sites and Planning.

Reasons

7. The appeal site is located on the eastern side of Ingatestone Road, approximately half way between Gorrell's Farm to the north and Budd's Farm to the south, and within attractive rolling countryside some 8 kilometres to the south west of the centre of Chelmsford. A short distance to the south is a detached property known as Mayfield House, whilst on the opposite side of Ingatestone Road is a small terrace of properties. As well as being within the Metropolitan Green Belt, the site is also within a Special Landscape Area and a Nature Conservation Zone.
8. The appellants are seeking approval to the siting of a mobile home and the construction of a utility room. They contend that the lack of suitable gypsy sites within Essex and the educational needs of their children afford very special circumstances that justify the appeal proposal.

The appeal site at present

9. The application drawing does not accurately record existing development within the appeal site. A mobile home is located almost centrally at the southern end of the site. To the rear of this structure is a washroom and storage area, to the east a touring caravan, and to the west a double garage. Most of the site abutting the highway is hard surfaced, the depth of this area being approximately the same width as the double garage. Beyond the surfaced area, and abutting open countryside, is a small garden. At the northern end of the appeal site are parked a JCB, a van and a trailer.

The circumstances of the appellants

10. The appellants purchased the appeal site in 1997, and have occupied it intermittently since then. In March 1998, the Council issued two Enforcement Notices, requiring that the use of the site as a caravan site cease, and that a concrete hardstanding be removed. Appeals were lodged against both Notices. Although my colleague acknowledged that Mrs Steers is a Romany Gypsy by birth, and that Mr Steers travelled in a caravan with his father, the appeals were dismissed. Notwithstanding a nine-month period for compliance with conditions attached to the decisions, the appellants continued to occupy the land.
11. In June 2000, outline planning permission was sought for the erection of a bungalow on the appeal site. This was refused by the Council in August 2000, and dismissed on appeal in

February 2001. Common to all these decisions was the inappropriateness of development within the Green Belt.

12. The appellants have also had a number of opportunities to settle either on authorised gypsy sites, or within a dwelling as Council tenants. The family was initially resident on a County Council operated site in Little Waltham, but gave up this secure authorised pitch to travel. On their return, they were resident at a further County Council operated site in Writtle for three years. From there, the Council housed the family in a two-bedroom dwelling in Boreham. After a year, the family abandoned the property and in September 1997 moved to the appeal site.
13. Following non-compliance with the aforementioned Enforcement Notices, the Council re-housed the family in May 2000. The keys to this property were returned in March 2001, when the family again returned to Sunnymead.

The first issue

14. The appellants contend that for a number of reasons, they found the aforementioned gypsy sites and accommodation unacceptable. In accordance with government policy, they are attempting to secure their own site as a base. However, when determining the 1998 appeals against Enforcement Notices, my colleague considered in detail their personal circumstances. He concluded that the fact that they were gypsies did not in itself confer any special status in relation to Green Belt policies. He drew attention to the fact that they had chosen to give up pitches on two official sites within the Borough, as well as local authority housing accommodation. Indeed, he observed that '*Whilst the appellants may face hardship if they are obliged to vacate the appeal site, the evidence suggests that it would stem largely from decisions which they themselves have made, rather than any failure on the part of the local planning authority to make adequate provision for their accommodation*'. I consider that these conclusions are equally valid today.
15. The appellants might well have experienced problems with their earlier accommodation, and wish to secure a relatively isolated location for a dwelling. However, these circumstances do not justify setting aside nationally accepted guidance regarding development within the Green Belt; such situations could be repeated many times throughout the countryside.
16. With regard to the educational needs of their children, at present they attend schools in Margaretting some 4 kilometres to the south east of the appeal site, and also at Moulsham within Chelmsford. I accept that the present accommodation might well be convenient with regard access to these facilities. However, this is a transitory situation; as the children grow up they will move to senior schools which may be nearer, or further away, from Sunnymead. Again therefore, this situation does not justify setting aside established Green Belt guidance.
17. Both parties made reference to statistics relating to the provision of gypsy sites nationally. The Council acknowledges that there is a need for additional facilities at the local level. In this context, 11 new pitches will shortly be available at the Meadow Lane site at Runwell. The appellants have not approached the Council with the view to securing one of these pitches. In addition, at the hearing Mr Steers confirmed that he is no longer a traveller.

The second issue

18. Structures and vehicles within the appeal site have been described in paragraph 9 above. The boundary treatment to Ingatestone Road comprises a hedge and timber fencing panels, which to an extent screens the existing development from direct view from the adjacent highway. However, such a combination of materials is in itself an alien feature in the countryside. A hedge to the east defines the appeal site with relation to the adjacent open farmland. However, there is no clearly defined northern boundary. Consequently, the appeal site is more readily visible from the north, when in addition to the aforementioned features, the general paraphernalia of domestic life is seen against a back cloth of attractive rolling countryside.
19. I acknowledge that there are a number of buildings within the general proximity of the appeal site. However, these are of traditional construction and appearance, and fit easily within the pleasant open countryside. Whilst as stated I have no details of the proposed utility room before me, the existing single storey mobile home has a semi-permanent appearance. Therefore, I am of the opinion that the siting, appearance and juxtaposition of the existing development, together with the storage of vehicles within the appeal site, is at odds with the rural ambience of the area. I see no reason to believe that the erection of a small utility room would significantly alter these circumstances.

Conditions

20. I have had regard to the conditions suggested by the Council, but in the light of the above conclusions I do not consider that they would render the appeal proposal acceptable. The appellants have suggested a temporary permission, in order for them to have time to find alternative accommodation. Such a suggestion has some merit. However, I understand that the Council has prepared an injunction in order to secure compliance with an Enforcement Notice, but this is held in abeyance pending my determination of this appeal. Should this be served, then an appropriate period of compliance would serve the same purpose. Consequently, I do not consider that a temporary planning permission is necessary.

The Human Rights Act

21. The appellant has drawn attention to Article 8 of the European Convention on Human Rights, which is now incorporated in the Human Rights Act 1998. Reference is made to relevant case law, including Chapman et al v United Kingdom 2001. However, this judgement established the following principle. '*The Court will be slow to grant permission to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community*'. As recorded in paragraphs 10-13 above, there has been a consistent disregard for planning procedures and protocol.
22. I recognise that dismissal of the appeal before me would result in an interference with the appellants' home, and private and family life. Nevertheless, that interference must be balanced against the legitimate aims stated in Article 8. The objections to both the appeal proposal, and also development which has taken place on the site as referred to in paragraphs 8 and 9 above, are serious. They could not be overcome by granting a temporary planning permission or one subject to other conditions.

23. Similarly, I have had regard to the educational needs of the appellants' children. However, as recorded in paragraph 16, for the reasons described I consider that alternative arrangements would be possible. Therefore, in the light of the circumstances, I consider that the refusal of planning permission is necessary in a democratic society in furtherance of the legitimate aims stated. They do not place a disproportionate burden on the appellants; I therefore consider that the dismissal of this appeal would not result in a violation of the appellants' rights under Article 8 of the Convention.

Conclusions

24. Therefore, for the above reasons I am of the opinion that there are no very special circumstances that would outweigh any objections to inappropriate development in the Green Belt. In addition, by virtue of its siting and appearance, the development undertaken is harmful to the character and openness of the Green Belt; any further buildings would not alleviate this situation.

25. As such, the proposal before me does not accord with the main thrust and/or relevant criteria of Structure Plan Policies C1, C2, CS2 and H6, extant Local Plan Policies HO4, HO17 and ENV1, or emerging Local Plan Policy COM10. I have given careful consideration to all other matters raised, including an appeal decision by the Secretary of State in favour of the Gypsy appellant, but nothing persuades me from my conclusions with regard to the main issues.

Formal Decision

26. In exercise of the powers transferred to me, I dismiss the appeal.



Roger Bon

INSPECTOR

Information

A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

APPEARANCES

FOR THE APPELLANT:

Dr. D Kenrick

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Mr D Steers

Sunnymead, Ingatestone Road, Highwood, Chelmsford CM1 3QT.

FOR THE LOCAL PLANNING AUTHORITY:

Mrs C Lyons BSc(Hons) DipTP Enforcement Team Leader.

MRTPI

Miss L Jennings BA(Hons) MTP Planning Officer.

MRTPI

DOCUMENTS

- Document 1 List of persons present at the hearing.
- Document 2 Letter of notification of the hearing.
- Document 3 Letters received.
- Document 4 Development Plan Notation, put in by Mrs Lyons.
- Document 5 Revised Policy COM10, put in by Mrs Lyons.
- Document 6 Revised versions of paragraphs 17.1, 17.2 and 18.1 within the Council's Statement of Case, put in by Mrs Lyons.
- Document 7 Latest count of Gypsy caravans within Chelmsford Borough, put in by Mrs Lyons.
- Document 8 Correspondence relating to the appellants, put in by Mrs Lyons.
- Document 9 Green Belt extract, put in by Mrs Lyons.
- Document 10 Copy of appeal determination by the Secretary of State, put in by Dr. Kenrick.

PLANS

Plan A Application Location Plan.

Plan B Application Block (Site) Plan.